DENSITY TRANSFERS

Policy Review and Recommendations

Planning and Development Department
Stephen G. McLaughlin, Commissioner
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1. Introduction

Density transfers, or more accurately, transfers of development rights, have been regarded with skepticism or even alarm, by some members of the general public, and have been embraced with some trepidation by the planning profession. Because density transfers are a relatively recent phenomenon, and experience with them, although growing, is still relatively limited, there is a lingering doubt in the minds of some observers about the efficacy of density transfer programs.

Although debate continues in the planning profession, it is generally recognized that density transfers can be an important and useful addition to a municipality's regulatory powers in specific circumstances. A prerequisite for an effective transfer policy or program, however, must be a comprehensive and well established base of traditional planning tools and development controls. In that context, density transfers can play a useful role in achieving certain clearly defined objectives.

The concept of transfer of development rights has traditionally rested on two postulates. First, that where public intervention causes severe losses to certain land owners, these losses should be mitigated as much as possible. This is a particularly American consideration where under U.S. law the "taking" (expropriation without compensation) of development rights by a municipality through severe down zoning is considered unconstitutional. In the United States, landmark preservation (desirable under-development) became the first beneficiary of the transfer of development rights technique for switching the cost of amenity preservation from the public or the individual land owner to other owners and developers of land.

The second postulate upon which the concept rests is that in many instances, planning goals can be served as effectively if development rights are distributed on an area basis as on the traditional lot basis. Acceptance of this principal has met with some resistance. Traditional zoning regulation, which is predicated on assignment of density rights by lots, does not permit transfers of unused rights to non-contiguous lots in the same block let alone in separate blocks. Such transfers tend to be regarded as contrary to the conventional wisdom which asserts a need for uniformity of controls and equity for land owners in a given area.

It is instructive, however, to view the transfer of development rights in the continuum of 'conventional' planning controls. In the case of the City, the Part I Plan allocates uses and density (development rights) on the basis of a generally desirable pattern of growth and development. Part II Plans, in place across the

City, look in more detail, on a local area or district basis, at the Part I provisions and where appropriate, reallocate or refine development rights. An even more detailed approach has been taken where development sites were defined as larger lots, such as the Eaton Centre, Chelsea Inn, Atrium-on-Bay and Renaissance Plaza. Finally, the effect of density transfers has been achieved through the assignment of block densities, the approach used in the Ryerson Campus, St. Michael's College and Victoria College, where the owner of non-continguous lots can draw from an aggregate block density. Density transfers take the next step of allowing development rights to move to a non-continuous lot or even another block where the lands are not necessarily under the same ownership.

It is also important to note that a density transfer is not a density bonus. A transfer of development rights differs from a bonus in that no density is created in the transfer; already allocated development rights are merely re-distributed. As a technique, a density transfer can be used to achieve the same objective as a density bonus, as for example to achieve open space. However, the distinction between the two techniques can have important planning implications, particularly in the context of a plan such as the Central Area Plan where maximum commercial densities were established for important policy reasons. In this context, a density transfer program may be particularly valuable in achieving City objectives.

Although the transfer of development rights can be seen as a next logical step in the exercise of traditional planning controls, transfers differ in a fundamental way from other conventional tools. Whereas plans and zoning by-laws, when conscientiously administered, bring an essential certainty and equity to the land market, density transfers have the potential of producing the opposite effect, unless very carefully delineated to achieve a specific objective. (The potential impacts on the land market are discussed in detail in Section 2.1.) For this and other reasons, also discussed in Section 2.1, the use of density transfers must be carefully controlled and limited. Also for these reasons, it is important not to proceed with density transfers on an ad hoc basis, but to clearly formulate and formalize a policy context.

As discussed in the report prepared by Berridge Lewinberg Associates which accompanies this report, the experience of other municipalities in this respect is also instructive. Other municipalities where density transfer programs are well established urge extreme caution in considering amendments to any existing policy. A critical consideration in the exercise of this planning tool appears to be that the limits of any transfer policy not be exceeded except in the most exceptional or unique circumstances.

A density transfer program is not a substitute for traditional development control techniques, but such a program can enhance the city's potential to administer growth and development and achieve specific objectives. This report takes the approach that the use of density transfers should continue to be part of the City's land use planning tools, but that a broadly defined policy would be inappropriate and potentially counter productive.

2. General Concerns Related to Transfers of Density

The potential of a density transfer program to achieve major public objectives is recognized. Other cities have used such programs to assure the preservation of major historic buildings. Vancouver's transfer policy, in addition to heritage preservation, permits transfers to create desirable public open space, and improved urban design. A policy could theoretically also be used to achieve assisted housing, or conveyance of land for assisted housing, although no other municipality in North America has proposed such a policy.

Many of these objectives could also be met through other land use techniques such as bonusing, i.e. direct up-zoning in exchange for certain matters, services or facilities. Authority for this already exists in the Planning Act, in Section 36.

The advantage to using density transfers to secure these objectives over other techniques is that no new floor area, commercial or residential, is created. Aggregate densities remain the same. This is an important consideration where a Plan, such as the City of Toronto's, is largely based upon an analysis of a desirable rate and pattern of office and employment growth, which is balanced with the transportation system.

There are, however, disadvantages to density transfers generally which suggest that caution is necessary in considering a program which is not both very specific in its intent, and limited in application, as, for example, the City's small sites policy is.

2.1 Potential Disadvantages of Density Transfers

Balance of Uses

The Central Area Plan sought to establish a balance of uses, commercial and residential, within the Central Area. It was considered important that in the Central Core in particular, housing and commercial activity not be separated, but mixed-use areas be encouraged. Density transfers, which would generally allow for the consolidation of residential uses on one lot and commercial on another, could in the long term undermine the balance of uses that the Plan seeks to achieve.

Transportation

Although in principle density transfers would not affect the regional transportation system, because no new density is created, transfers have the potential to upset the local transportation balance. To be fair, of course, transfers also can provide an opportunity to improve the balance by, for example, shifting commecial uses to a better location for

transit. The difficulty is in predicting with any certainty the cumulative impact of the transportation implications under a general policy.

Impact on the Land Market

Density transfers can engender distortions in the land market which have the potential to undermine the basis of the Plan. The Central Area Plan established maximum commercial densities based on a desirable rate of growth. It was assumed that social costs that resulted from higher densities (including undesirable and inefficient metro-wide growth patterns, infrastructure costs and the pressure on inner neighbourhoods) were not acceptable. It was further assumed that lower densities (than previously permitted) would tend to lower the rate of growth of office development in the downtown.

In this context, density transfers from sites where development is unlikely in any event or where it is not expected for a long period of time, to sites where development is imminent (which has the short term effect, because of the remote development potential of the donor site, of a simple up-zoning) could accelerate the rate of office growth by creating a more elastic supply. The downtown area may then capture a larger share of the metropolitan office space growth than it would otherwise. Depending on the scale of the change, this might impact on the policy of the Plan to promote office deconcentration.

Land values can also be affected by density transfers. Depending on the location of the lots, the value of the buildable floor area associated with each of the lots could be quite different. Density would have a tendency, of course. to travel to the site with the highest value. The expectation of transfers from a lower value site to a more valuable one will tend to artificially increase land values of potential donor sites. A buyer will be more willing to pay more than the zoning of the lands should command on the expectation that the density rights can be sold to a more valuable location. As a result, speculation is fuelled. This kind of speculation could have a serious destablizing effect on the land market by upsetting the level of certainty which has been achieved through traditional planning controls such as zoning.

Problematic or Unresolved Sites can be left Behind

While not true in all cases, density transfers can result in a donor lot (one giving up commercial density) being left with development potential which given market forces is unlikely to be realized. In the heart of the Financial District, for example, a density transfer between two sites could result in

a 'housing' site for which housing is unlikely to ever materialize. On the other hand, a transfer whose objective is heritage preservation would not have this problem, since what is left behind is precisely what is desired - a preserved historic building.

The potential disadvantages and distortions that can be engendered by density transfers can be moderated where a policy is carefully limited and targetted. A policy which both limits the number of potential applications and identifes the eligible sites will help to ensure that deleterious effects are minimized. The broader a transfer policy becomes in its application and objectives, the more difficult it becomes to anticipate, predict, moderate, or prevent the undesirable effects inherent in transfers of density.

It has been demonstrated in other municipalities that density transfers can be used creatively and sensibly without causing major upheavals in the land market or planning control. There are important considerations, however, in the formulation of a policy which must be addressed.

(a) Objectives

If a density transfer is to be considered, it would have to be because it is desirable to have reduced development potential on the donor site. The most common reason is to preserve an historic building. Others might include the creation of open space, the preservation of a view or the protection of a streetscape. Any policy must be structured around a specific planning objective, like historic preservation, rather than around the planning mechanism of density transfer. The nature of the particular objective, in the overall context of the Plan, would determine the appropriateness of the transfer mechanism and the form and approach that the policy should take.

If density transfers are to be used to achieve other objectives, it must not be on an episodic or opportunistic basis. However, if the objective can be detailed in some way and the impact of the policy assessed in advance vis-a-vis the goals and objectives of the Plan, then it may be appropriate to broaden the objectives for consideration of the use of the mechanism.

(b) The Land Market

Any public intervention in the land market, whether through zoning or public investment in infrastructure, can affect land values and the market. The land market, as noted above, can be particularly sensitive to density transfers. The critical concern is to maintain a sense of consistency and equity in

the land market. Certainty and equity can be enhanced by clearly defining under what conditions transfers would be permitted and thereby conferring a certain predictability to which the marketplace can respond. In the case of density transfers, it would also be desirable to ensure that the value of the development rights on the donor site is reasonably similar (per square metre) to that of the development rights on the receiving site.

Traditionally this has been done by limiting the distance over which the development rights can move, and/or by requiring that the sites be located in the same zoning district or Plan designation. This is not optimal, of course, because even sites within the same block can have significantly different values. As discussed below, it would be theoretically possible to develop a more refined method of compensating for development rights of differing values, which would have the effect of eliminating entirely the issue of distortions in the marketplace. I am not convinced, however, that it could be practically implemented. If the value of development rights at the receiving lot (Lot A) is for example $100/sq.ft. but at the donor lot (Lot B) it is only $50/sq.ft., the potential distortions in the land market would be obviated if in the approved transaction, Lot A acquired, say, 1,000 sq.ft. of density from Lot B, but when those rights landed on Lot A, only 500 sq.ft. of density was allowed. By pro-rating the density on the basis of its actual value, which varies by location, the effect on land values are neutral. The speculative incentive is removed.

The implementation of such a program is, of course, fraught with difficulties, beginning with how the value of development rights is determined (and by whom). Systematizing the pro-rating of density also poses administrative difficulties, however the greatest obstacle to this kind of intervention in market transactions is likely to come from the marketplace itself, despite the fact that the intention is to provide stability to the market. In addition, although the impact on the land market would be addressed by such a program, the impact on the local and regional transportation system would be indeterminant.

A proposal such as outlined above is not likely to be feasible. However, it is important that any transfer program attempt to reduce as much as possible the potential for distortion. This can be achieved by limiting the opportunities and clearly defining those sites which maybe eligible, and using some form of the traditional distance limitation.

(c) Accelerating Office Growth

In developing the Central Area Plan, certain assumptions were made about sites that were not likely to be developed during the life of the Plan. The use of a density transfer technique to achieve any particular objective would have to take into account the potential impact on the rate of office growth in the Central Core which might result if sites, which had been assumed to have remote development potential, were able to release development rights for use elsewhere.

With these potential disadvantages and critical considerations in mind, the subsequent sections look at the City's experience with transfers, the experience of other municipalities and at the opportunities for using density transfers to achieve a number of objectives.

3. Existing Official Plan Policies on Density Transfers

The City's Official Plan currently contains three policies respecting transfers of density. These are Sections 1A.34(a), 1A.42(d) and 3A.5(f) and are set out in the Appendix of this report. The intent of each of these policies is different and is described briefly below.

(a) Section 1A.34(a): Density Transfers for General Institutions

Section 1A.34(a) sets out the provisions for density transfers for general institutions in Medium and High Density Mixed Commercial-Residential Areas and generally allows for the gross floor area permitted on one lot owned by an institution to be erected on another lot or lots owned by the same institution. The effect of the section is to allow institutions to calculate their density on a block basis. The provisions require that the aggregate density on all lots not exceed the sum of the density permitted on each lot and that built form, noise, traffic and parking impacts are acceptable.

The intent of this section of the Plan is to give the maximum flexibility for general institutions not located in Institutional Areas (where there is no density maximum for institutions) to make use of their development rights in the manner most appropriate or efficient for their needs. Under this Section, an institution has a density pool from which to draw upon as needed with the constraint that the resulting built form and traffic and parking impacts are acceptable.

This policy has been implemented for the Ryerson campus, St. Michael's College and Victoria College.

(b) Section 1A.42(d): Density Transfers for Historic Performing Arts

Section 1A.42 of the Official Plan embodies Council's policy with respect to the preservation of buildings of historic or architectural value or significance. Within that policy context, the Section provides for a density exemption for buildings designated under the Ontario Heritage Act. Subsection 1A.42(d) of that Section, adopted as an amendment to the Section in 1982, sets out a policy framework for further amendments to the Official Plan, on a site specific basis, to permit the transfer of commercial density from a designated property where the owner intends to restore the building for performing arts use.

Because this policy deals with buildings for use by the performing arts, its potential application is actually quite

limited. It is further limited by the requirement that the donor and receiving lots (only 2 lots can be involved) must be located either in a High Density Mixed Commercial-Residential Area south of Grosvenor Street or in the Financial District. In addition, the policy is one to consider an Official Plan amendment under certain circumstances. The conditions under which Council may consider a site specific Official Plan amendment area:

1. that the historic lot is designated;

2. the density exemption may be used in calculating the permitted density on the historic lot;

3. the commercial density to be transferred off is limited by the mixing formula constant on the receiving lot except where:

    a. Council determines that the proposed transfer in excess of the constant will be consistent with the office policies (1A.4 and 1A.7) of the Plan,

    b. the receiving lot loses its residential development potential, and

    c. the resulting built form and bulk are acceptable; and

4. the development on the receiving lot is compatible with development or potential developments nearby.

The general intent of the policy established by Section 1A.42(d) is clearly the preservation of a specific kind of heritage building. The policy was developed, in part, to provide a framework for the preservation of the Wintergarden Elgin Theatre block which remains the only instance where this policy has been used.

(c) Section 3A.5(f): Density Exchanges Between Small Sites

This Section of the Plan, frequently referred to as the small sites policy, was developed in response to concerns raised at the time of the Central Area Plan hearings that the Plan's mixed use policies were biased towards larger sites. Although nominally a density transfer policy, Section 3A.5(f) is actually a policy of density exchanges between two small sites, and differs from traditional transfer programs where some form of preservation is the objective. The objective of most, if not all other transfer programs in existence in North America, is to reduce density on one site in order to preserve a building or open space.

The argument made at the time of the Central Area Plan hearings postulated that, since Plan densities could only be maximized through mixed-use developments, the owner of a site where mixed-use development was infeasible, or where a premium in construction costs was associated with mixed-use development, would in essence be penalized under the Plan. It was argued that small sites generally fell into the category of sites that were discriminated against in this manner.

To redress this apparent inequitable treatment, a policy was introduced (Section 3A.5(f)) which allows Council to consider an exchange of densities between two small lots so that the lots in aggregate could take advantage of the maximum permitted densities of the Plan. In this transaction, density moves between the lots so that commercial density can be transferred from lot A to lot B and residential density can be transferred from lot B to lot A. Lot B then becomes largely or entirely commercial and lot A largely or entirely residential. No new density is created; only densities already allocated in the Plan are able to be used. The transaction, however, enables each site to make use of those allocated densities which, in the absence of the exchange, may have gone unbuilt.

Under the policy, transfers (or exchanges) of density occur only through a rezoning; each case must be evaluated on its merits and specific conditions which govern which applications can be considered must be met. Briefly, the most important of those conditions are that:

a. only two lots are involved;

b. both lots are located in the same Official Plan district or area and only lots in Medium Density Mixed Commercial-Residential Areas, High Density Mixed Commercial-Residential Area and the Financial District are eligible;

c. both lots must be less than .405 hectare (1 acre) in size;

d. the lots are no further apart than 150 metres (500 feet);

e. neither building can exceed the limit of the mixing formula constant on the site; and

f. the lot giving commercial density (and receiving residential) is not already developed to 70% of its maximum permitted commercial density.

A hypothetical example may help to illustrate how the existing policy is intended to work. Assume that both lots are the

same size, namely, 1 000 square metres (10,800 square feet), both are located in a High Density Mixed Commercial-Residential Area and both are within 150 metres of one another. Lot A will be the lot receiving commercial density and lot B will be receiving residential density. The total non-residential gross floor area on lot A is limited to 7.8 times the lot area, i.e. the mixing formula constant. This means that development rights of not more than 3.3 times the lot area of lot B can be transferred to lot A. Lot A also transfers its residual residential density of 33 units to lot B. Lot B's options are a purely residential building of 78 units or, since there is a residual commercial density of 1.2 times the lot (only 3.3 times was transferred), a mainly residential building with, for example, some street related retail which might work out to .5 times commercial plus 73 units.

For small lots, single use development is generally more efficient than attempting to combine both the uses in the same building, although there have been recent examples of mixed-use buildings on small sites. These tend, however, to be in the Medium Density Mixed Commercial-Residential areas where the commercial component is much lower (2 times compared to 4.5 in High Density Mixed Commercial-Residential). Thus, in the Medium Density Mixed Commercial-Residential Area, the projects tend to be mainly residential in any any event.

While the policy allows each owner to maximize the development potential of his land, the important policy consideration is that the mixed-use objectives of the Plan are respected at least on an area basis. In many districts, in the absence of such a policy, the likely development outcome would be two small commercial buildings on two lots and no housing. The transfer policy provides a mechanism to assist in achieving the mixed-use objectives of the Plan at the same time as it affords an opportunity for small sites to maximize development potential.

4. Experience with Existing Policies

Under the existing provisions of the Official Plan, Council has approved a total of four density transfers. These are shown on Table 1, and are discussed in detail below.

4.1 Transfers pursuant to Section 3A.5(f) - The Small Sites Policy

Three transfers have proceeded in accordance with Section 3A.5(f) of the Official Plan. These are Sun Life/St. Andrews Church (which was actually 2 sets of transfers); 121 King W./123-125 Wellington (Olympia & York); and 58 Richmond/61 Queen Street East (Metro Ambulance). In each case, although the conditions of Section 3A.5(f) of the Plan were met, the intent of the policy to facilitate mixed-use development was not necessarily achieved.

(a) Sun Life/St. Andrews

The principle intent of the Sun Life/St. Andrews transfers, between the Church at 75 Simcoe and Sun Life's property at 150 King Street West and between the Manse at 73 Simcoe and Sun Life's property at 200 King Street West, was the preservation of the Church and Manse buildings. An exchange of densities did occur in accordance with 3A.5(f) with the Sun Life properties receiving the commercial density and St. Andrews receiving the residential density. It was not the intent at the time, however, that the housing be necessarily built, and the site specific by-laws actually restrict the development of residential uses on these historic sites. It now appears, however, that the Church may be interested in pursuing a housing option for the site.

(b) King Street West/Wellington

In 1982, City Council approved a density exchange between two sites in the Financial District, both owned by Olympia and York. The 'commercial' site at the south-east corner of King and York Streets was subsequently developed. The 'residential' lot, however, at University and Wellington has not been developed residentially, but remains a parking lot.

This exchange of densities was approved under Section 3A.5(f) and complied fully with all the conditions set out in the policy. At the time the application was processed it was noted that the provision of housing at this location in the Financial District would be unusual but certainly acceptable. It was expected that the units would appeal to corporations for use by executives posted in Toronto on a short term temporary basis. Notwithstanding the expectation that potential market existed, the housing has not yet been built.

TABLE 1: DENSITY TRANSFERS APPROVED BY COUNCIL UNDER EXISTING PLAN PROVISIONS

	SITE	PLAN PROVISION	REMARKS
1.	Sun Life/St. Andrews a) 200 King W/73 Simcoe b) 150 King W/75 Simcoe	3A.5(f) small sites	no housing built; historic preservation church recently expressed interest in building housing
2.	121 King W./ 123-125 Wellington	3A.5(f) small sites	housing not yet built
3.	58 Richmond/61 Queen E (Metro Ambulance)	3A.5(f) small sites	housing not intended to be built; Metro Ambulance station built on 'residential' lot
4.	Wintergarden/ Wellington & Piper	1A.42(d) historic performing arts	O.P.A. pursuant to the general policy

(c) 58 Richmond Street East/61 Queen Street East

The third density exchange approved by City Council and which also complied with the provisions of Section 3A.5(f) involved two sites located across the street from one another at Berti Lane and Richmond and Queen Streets. The Queen Street site was owned by the Metropolitan Corporation and was intended to be used for a Metro Ambulance building. The site at Richmond and Berti was privately owned and had been used as a parking lot. The proposal involved an exchange of sites as well as density. The owner of the Richmond Street site was to erect a new Metro Ambulance building on the Richmond Street site and the remaining commercial density (4.2 x the lot area) would be transferred to the Queen Street site. This latter site would then be conveyed to the developer to build an office building. Residential density was transferred back to the new Metro site at Richmond Street although the proposal did not include any housing above the Metro Ambulance building.

As in the other two exchanges noted above, this density transfer complied with all the provisions of Section 3A.5(f) of the Plan but the housing component was never built. In this case, it was never expected to be built on the site involved in the transfer although no application to transfer the units to a third site was ever made. It was not considered appropriate that housing be built over the Metro Ambulance building itself even though the units were transferred there.

4.2 Transfers pursuant to Section 1A.42(d)

The only density transfer which has proceeded under the historic performing arts transfer policy was to permit the transfer of density from the Wintergarden/Elgin Theatres to a site at Wellington and Piper Streets. The transfer complied with the general provisions of the special policy, with the exception that all the permitted density from the Wintergarden/Elgin Theatres was transferred leaving the buildings essentially non-conforming. A subsequent Official Plan amendment was required to restore the density for the theatres and to allow for a backstage addition which is essential to the future usability of the theatres.

5. Experience with Transfers Outside the Existing Policies

City Council has approved five additional density transfers which have not conformed to the existing policies and which have required Official Plan amendments as set out in Table 2. Three of these have only received approval in principle and are now in various stages of final approval.

5.1 252 Adelaide Street East/44-50 York Street

One of the first density transfers outside the existing policies involved a transfer of commercial density from the Bank of Upper Canada site on Adelaide Street to a site at the foot of University Avenue, west of the Royal York Hotel. The transfer was controversial and one which, at the time, I could not support on planning grounds.

A significant distance, over one kilometre, separated the donor and the receiving lots. In addition, the density was moving from an industrial district to the Financial District. The commercial density that was available on the Bank of Upper Canada site would normally have not been permitted at all, but as incentive to retain the historic building, that density had been granted on a site specific basis. It had been my view that it would have been possible to erect a compatible commercial building on the lot of the Bank of Upper Canada without detracting in any way from the historic buildings. Finally, the historic Bank building was, in fact, not threatened by demolition or redevelopment but had been preserved and rennovated.

5.2 King Deck

Three sites in the Richmond-Lombard-King area between Victoria and Church Streets were also the subject of an application for density transfers outside the Plan. The proposal would have consolidated commercial density on the King Street site from the site at Richmond and Lombard and involved the conveyance to the City of lands north of Court Street for parks purposes. A linear park leading from King Street to the proposed City park was also to be secured.

The King Deck density transfer proposal, which was approved in principle although by-laws were never passed, did comply with the small sites policy (3A.5(f)) in a number of ways: all sites were small (although one was slightly in excess of .405 hectares); all were within 150 metres of one another. The significant departure from the small sites policy related to the number of sites involved and the different Official Plan districts they straddled. Section 3A.5(f) permits transfers between two lots only, while this application involved three sites.

TABLE 2: DENSITY TRANSFERS OUTSIDE THE EXISTING POLICIES

	SITE	REMARKS
1.	252 Adelaide/ 44-50 York Street	-Involved the historic Bank of Upper Canada -Transferred from an Industrial District to the Financial District -Distance between the two sites over 1 kilometer
2.	25 Richmond & 20-26 Lombard/ 10 Court/70-92 King St. East (known as King Deck)*	-Involved 3 sites -City to get park at Court St. & a small park area on King St. site -All small sites (although one slightly larger than .405 ha) -All within 150 m of one another but not all in the same use district
3.	748-760 Bay/Bay;Gerrard; Laplante;Hayter*	-Met all criteria for small sites transfer policy except the proposal was for special housing where the policy only allows for the transfer of conventional housing density -Involves preservation of historic buildings on Gerrard Street
4.	Scotia Plaza/Waterpark Place	-Not small sites -Transfer resulted in a more appropriate development in terms of use and built form at Waterpark Place -Density more appropriate at prominent Bay & King location -Distance greater than 150 m and sites in different use districts -Involved the preservation of several historic buildings and provision of assisted housing site and daycare facilities
5.	31 Bloor Street East/ 2 Sultan/20 Charles St./ 830 Church*	-Involved 4 small sites (less than .405 ha) -Not all sites in the same use district -One site further than 150 m -Density exceeded the mixing formula constant on one site -Involved securing assisted housing, building of municipal parking garage and improvements to the subway station

* Approved in principle only, by-laws not yet passed

5.3 West Side of Bay, North of Gerrard

Another application approved in principle by City Council involved a site on the west side of Bay Street, north of Gerrard Street, in the block bounded by Bay, Gerrard, Hayter and LaPlante, and another site in the block to the north, also fronting on Bay Street. This proposal, which also included the preservation of historic buildings on Gerrard, complied with all but one of the criteria of the small sites transfer policy. The application was to permit the transfer of special housing density, while Section 3A.5(f) only permits the transfer of conventional units.

5.4 Scotia Plaza/Waterpark Place

Scotia Plaza was the first and thus far the only density transfer approved by Council involving large sites. The Scotia Plaza and Waterpark Place sites were both considerably larger than in any other previous proposal and greatly in excess of the .405 hectare limit in the small sites transfer policy. The sites were also separated by a distance of over 800 metres and were located within different Official Plan designations.

Notwithstanding these features of the proposal, the transfer was considered desirable principally because of the unique opportunity it created for a revised building scheme agreement for Waterpark Place. The transfer of commercial density from Waterpark Place to Scotia Plaza and the reciprocal transfer of residential density resulted in a better mix of uses on the Waterpark Place site and in particular, reduced the amount and height of the commercial development on the waterfront and located the density at King and Bay where the existing transportation system could more easily accommodate the additional floor area. In addition, improvements to the built form of the project were achieved and desirable pedestrian amenities were secured. Also secured were the provision of an assisted housing site and daycare facilities.

5.5 31 Bloor Street East

Council recently approved the draft by-laws to permit transfers of density among four sites in the Bloor-Yonge area: 31 Bloor Street East; 2 Sultan Street; 20 Charles Street East; and 830 Church Street and 20-30 Asquith Avenue.

As in the King Deck proposal, this transfer involved more than two sites, all of which were small (less than .405 hectares). The proposal consolidated commercial density from all the sites to 31 Bloor and the residential density permitted at that site was distributed among the other three sites.

The 31 Bloor Street East density transfer did not comply with a number of the conditions of the small sites policy. However, the

proposal did achieve a number of important housing, parking and transportation objectives by: (1) securing affordable housing at 2 Sultan Street; (2) building of a municipal parking garage on Parking Authority of Toronto Lot 1 (20 Charles Street East); (3) freeing up of Parking Authority of Toronto Lots 2 and 3 for assisted housing; and (4) securing significant improvements to the Bloor Yonge Subway Station.

General Characteristics of Transfers Outside the Existing Policies

Although the individual circumstances of each of the transfers described above varied widely, as a whole these five transfers were generally seen to achieve a number of important City objectives not originally contemplated by the existing transfer policies. The range of opportunities afforded by these applications was broad, but in each case, a density transfer was regarded as the appropriate mechanism to achieve City objectives. These included: historic preservation; improved site planning and distribution of land uses; desirable public open space; affordable and seniors housing; municipal parking and transit improvements. In the final analysis, however, there is no consistent policy basis for evaluating these transfers and no common policy thread which binds them together.

6. Experience of Other North American Municipalities with Density Transfers

The firm of Berridge Lewinberg Associates was retained to conduct a comparative analysis of the experience of other North American municipalities with density transfers. Their study focussed on large cities and did not include the experience of smaller or rural municipalities where preservation of agricultural or ecologically sensitive lands has been the primary objectives of density transfer programs.

The consultants evaluated the experience of Vancouver, New York, San Francisco and Dallas, and assessed the reasons why cities such as Boston and Chicago have decided not to institute such programs.

The Berridge Lewinberg report, entitled "Density Transfers: A comparative analysis of density transfer policies in several North American cities", is published separately but as a companion to this report. However, I am here summarizing what I consider to be the salient conclusions of that report.

6.1 Existing Programs

The existing programs evaluated by the consultants have, for the most part, landmark preservation as the public objective. The transfer of development rights in these instances is clearly regarded as the appropriate policy instrument to achieve reduced development potential, and thereby historic preservation, of specific properties. Only Vancouver has additional public policy objectives for which density transfers may be used, namely: to create open space; to improve urban design and to encourage mixed-use development. The city of San Francisco, on the other hand, specifically rejected the idea of a transfer policy to create open space because of the potentially broad application and because the impact of such a policy could not be evaluated in advance. In New York City, officials were also concerned that the public objectives of its transfer programs not be broadened because of concerns over the potential impact on the land market, particularly with respect to the potential to undermine the certainty that other traditional planning instruments confer on the market place. It appears, therefore, that in general most municipalities regard the technique of transfer of development rights as a useful addition in very limited circumstances, in particular for historic preservation.

While the objectives of these programs are generally limited to preservation, the actual structure of the various programs and the conditions and criteria attached to them are quite variable. It appears, however, that the success of a density transfer program depends in large measure on the rules being both clear and directly related to:

(1) achieving the policy objective;

(2) addressing the impacts of the additional density on the location to which it is being transferred; and

(3) moderating potential distortions in the land market.

In the final analysis, these rules must also be realistic for the development industry, or there will be increasing pressure over time for change.

6.2 Certainty - No Exceptions

One of the clearest messages from planning officials interviewed by the consultants relates to the issue of maintaining certainty in the land market. It was universally felt that once the limits of a density transfer policy were established, it was critical that exceptions to accommodate particlar situations not be entertained.

The consultants have observed that a density transfer program is a viable policy instrument where the relationship between land values (perceived development potential) and permitted development rights are more or less in balance, but where, at least to some extent, density is a scarce commodity. The same conditions that set the ground work for a viable policy, however, also suggest that the land market will be extremely sensitive to any signals that the rules may be negotiable. Maintaining a climate of certainty is seen as an essential element in the implementation of any density transfer program. Certainty can be maintained, in the view of the consultants, if it is clear that no exceptions to a policy will be entertained and where the rules of the policy make sense in relation to the objective of the program and the nature of the transfer mechanism. Where either or both of these conditions do not obtain, the transfer policy will be called into question.

7. Analysis of Existing Policy: Proposals for Modification

Our experience with the application of the existing policies, 3A.5(f) and 1A.42(d), has been limited but instructive. The small sites policy will be discussed in this section of the report. The historic performing arts policy will be evaluated further in Section 8.1 within the context of an analysis of the need for a broader historic preservation policy.

7.1 The Intent of Section 3A.5(f)

The application of Section 3A.5(f) has shown that the existing policy can be useful in facilitating the efficient development of small lots. The conditions attached to this Section have limited the number of instances where small lots can be assisted in this way. There is reason to believe, as discussed further in Section 7.2 below, that the existing conditions are unnecessarily restrictive and that additional flexibility could be achieved without undermining the original intent of the policy.

On the other hand, our experience has also shown that the existing policy has been unsuccessful in achieving the mixed use objective of the Plan. In all three instances where the policy was implemented, no housing was ever built and in two cases was not expected to be built. In only one instance, the Olympia and York proposal for King/York and Wellington/University, was a specific housing proposal ever part of the application, and in that case it is still questionable whether the housing will ever be built.

A critical consideration in the review of this policy is whether additional conditions should apply in order to ensure that the Plan's mixed-use objectives are achieved in the implementation of this policy. Although technically a policy to facilitate efficient development of small lots, the need for the policy arose because of the problems posed by the mixed-use provisions of the Plan. The policy was designed to be an exchange of densities so that, at least on an area basis if not on every lot, the mixed-use objectives might be secured. In other words, it was expected that the land use outcome of the exchange would be one largely commercial building and one largely residential building, each on a small lot near one another.

In my view, it is important that the existing policy better reflect this policy objective by ensuring that the residential component of the exchange is actually built. Accordingly, I am recommending that the existing policy be amended to require that: (1) any application under the section be accompanied by detailed plans and drawings for the development of each of the sites involved, and (2) Council must give consideration to requiring that the commercial density in excess of that permitted on the

receiving lot before the transfer not be permitted to be erected until such time as the housing is built.

The requirement for detailed plans, essentially development review plans, for each site will enable Council to review the viability of the housing proposal which is part of the density exchange and will help to ensure that an appropriate residential building will result. The second and related condition is intended to ensure that where appropriate, Council may require that the housing be built first. This may not be necessary in all instances, where for example, a non-profit co-op or Cityhome is the intended sponsor for the housing and where it is clear that the local housing market is so strong that such a requirement would be redundant. On the whole, however, this may be an important safeguard for the mixed-use objectives of the Plan.

It is also important to recognize the practical limits of the policy as it applies in the Financial District. The policy is predicated on the realization of the mixed-use objectives of the Plan. For many reasons the market is unlikely to respond to produce housing in the heart of the Financial District. In many respects, the area lacks residential amenities normally expected to serve a conventional housing market. The small sites policy, however, remains viable for the fringe areas of the Financial District, adjacent to the High Density Mixed Commercial-Residential Areas. As discussed in the following sections, I am proposing certain amendments that will enhance the likelihood that the policy will be effective and useful on these fringe areas of the District.

7.2 Existing Conditions of Section 3A.5(f)

The existing policy imposes a number of restrictions on the eligibility of sites that may be involved in any exchange and sets conditions on the amount and type of density which may be exchanged. Each of these restrictions and conditions is discussed below in terms of its relationship to achieving the intent of the policy.

Lot Size

The policy sets out a maximum lot size of 0.405 hectares (about one acre). This limit is designed to ensure that only those sites where it is clearly difficult to construct two separate buildings, one commercial and one residential, are eligible for transfers. A policy whose intent is to facilitate the development of small sites should, clearly, establish what constitutes a small site, and so some limitation is fundamental. The .405 hectare figure, in my view, generally remains valid, however, I will be recommending that this figure be rounded off to .4 hectares. Most

developments on lots smaller than one acre cannot easily accommodate two buildings or towers. Where such mixed-use buildings exist, such as 1132 and 1166 Bay Street, the residential uses are built above the commercial, and the latter uses are, in fact, only a small component of the project.

There may, if course, be lots in excess of .4 hectares which, due to particular site constraints, mixed-use development is not feasible or economic. In these instances, a minor variance from the .4 hectare limit may be appropriate, however that discretionary flexibility already exists in the Plan by virtue of Section 1.2(c) which states that all numerical figures, other than density, are not absolute and "minor variations from them will be tolerated providing the intent and spirit of the Plan is maintained".

Lots are no further than 150 m apart

A maximum distance between lots is established at 150 metres (about 500 feet), keeping the two sites within about one or two blocks of one another. The intent of this limit is threefold:

(1) to ensure that the mixed-use objectives of the Plan are achieved within an area if not on a site by site basis, and

(2) to ensure that the impact on transportation and other services of the transfer will be neutral, and

(3) to limit distortions to land values that could occur if transfers could generally proceed over large distances.

Without a fairly strict limit on distance, density could begin to accumulate at strategic locations to the detriment of less desirable ones, resulting in serious distortions in land values.

In terms of the small sites mixed-use policy objective, it is important that this limit be maintained. The planning relationship between the lot that becomes commercial and the lot that becomes residential should not be lost. This can only be done effectively by strictly limiting the distance of the transfer. Again, as in the lot size limitation, minor variances which are consistent with the intent of the maximum distance can be achieved in accordance with Section 1.2(c).

Only Two Lots

Under the existing policy, only two lots can be involved in the exchange. The reason for this limit is essentially to ensure that the 150 metre distance limit is not effectively increased as more sites become involved. In my view, the 150 metre distance limit is the important consideration and not the number of sites involved.

If, for example, there were three sites, one close to .4 hectares in size and two smaller sites at say .2 hectares each, a very reasonable exchange might be commercial to the one larger lot and residential distributed between the two smaller ones or alternatively, one larger residential site with the commercial density being distributed to the smaller sites. Provided each site is within approximately 150 metres of the lot with which it is exchanging density, I see no reason why such a transfer would not be consistent with the policy and should not be permitted.

There may be some concern that removing the restriction to two sites would suddenly open the policy up to 'stripping' commercial density off many small sites which already contain commercial buildings but which have excess density, to be concentrated at one location. Other conditions of the policy, however, such as the maximum density for each site and the disqualification of sites containing a commercial building built up to 70% of the maximum permitted commercial density (both discussed below), will indirectly limit the number of sites that can be involved.

In addition, the proposed amendments respecting the intent of the policy to also achieve housing will clearly limit this form of potential abuse. In my view, the intent of the policy will not be affected by a modification to permit more than two sites to be involved, provided the intent of the policy is clearly stated and understood.

Limit on Maximum Densities

The policy now sets a limit on the overall density of each of the lots as well as limiting the aggregate densities. This is set at the mixing formula constant for commercial uses, and the number of units established by the mixing formula for residential uses. It is essential for reasons of equity and built form that these restrictions remain.

In general, the mixing formula constant establishes the upper limit of bulk within an area. It is appropriate that in a density exchange the built form characteristics of an area be maintained and overly large buildings do not get built. This

is a reasonable protection for adjacent land owners. In addition, there should be equity built into the land use control system which tells each land owner that he will be treated equally, in terms of maximum permitted density, as another similar land owner. There is, in my opinion, no justification for removing the upper limit currently established in the policy (which is dependent upon the area in which the lot is located).

Lots are located in the same Area or District

The existing policy states that the lots involved in a density exchange must be located in the same Official Plan district or area. That is, both lots must be either in the Financial District, or in a High Density Mixed Commercial-Residential Area (HDMCRA) or in a Medium Density Mixed Commercial-Residential Area (MDMCRA). The policy does not apply to Low Density Mixed-Use Areas or to any other land use designations because the need for the policy does not arise in other areas. That is, the 'bias' towards larger sites to achieve mixed-use development is a factor only in the higher density mixed-use areas identified in the current policy.

This condition was intended to ensure that the sites involved generally related to one another and to prevent the movement of density to the higher density areas. The 150 metre distance limits, in my view, is a more effective and appropriate measure of the relationship between transfer sites. This, combined with the limitations imposed by the maximum allowable densities, will moderate any tendency to distort area objectives that might otherwise exist if the lots were located in different Official Plan areas.

In the example used earlier, of the two smaller sites and the one larger (but still small) site, if these lots were all within 150 metres but the two smaller lots were in an MDMCRA and the larger lot in an adjacent HDMCRA, an appropraite and reasonable exchange could be effected which would be consistent with Plan objectives. The maximum densities on each lot would still relate to the maximum permitted in the area in which the lot is located so that built form considerations would be addressed. Eliminating this condition would essentially allow for flexibility along the fringes of an area or district to allow nearby but differently designated sites to participate in a transfer. I do not see that the integrity of the policy is jeopardized by this additional flexibility.

Limitation where an existing building exceeds 70% of maximum density

This condition of the policy essentially states that commercial density cannot be transferred off a lot which is already developed to more than 70% of its maximum commercial density. The policy contemplates that the site which is giving up commercial density will be largely or entirely residential. If the site already contains a substantial commercial building, it is not likely that residential will be built on top. Achieving the housing component is a critically important part of the intent of the policy. In this report I am recommending amendments that will strengthen the intent of the policy to achieve mixed-use development. I see no reason to relax an existing condition so as to inhibit the building of housing.

In addition, at the time the Central Area Plan was developed, it was assumed that sites developed at or over 70% of the maximum would not likely be redeveloped during the life of the Plan. If this condition were removed or relaxed, density, which had been assumed to have remote development potential, could be released and used on other sites. Without such a restriction, the 'stripping' of density off sites could become commonplace, thereby potentially accelerating the rate of development in the Central Core. If this were allowed to occur on a significant scale, there could be a negative impact on the deconcentration policy in the Plan.

No previous transfer

Lots which have been involved in a previous transfer for which a by-law has been passed are not eligible for further transfers. The intent of this condition is to prevent the leap frogging of density and increasing the distance density can travel. This is an important condition and one which should be maintained.

Only conventional housing density can be transferred

The existing policy stipulates that the maximum residential densities permitted to be transferred shall be based on conventional housing units. At the time this policy was developed, residential density in mixed-use areas could only be calculated on a units per hectare (uph) basis and it was felt at the time that the transferring of special housing units (seniors and single person housing) would result in overly large concentrations of such small units on a lot, and in the case of senior citizens housing, overly large buildings. In my view, it would not, for these reasons, be appropriate to permit the transfer of special housing units.

However, the Plan has recently been amended to provide for an FSI option for calcuating residential density. The option permits a significantly larger number of units than the uph system, but sets a maximum limit on the total floor area of the building, which does not exist in the uph system.

The option to transfer residential density calculated on the basis of either conventional housing units under the uph system or residential floor area under the fsi system, should also be availabe under the density exchange policy. The mixing formula maximum on each lot under either system would be the limit for the purposes of any density transfer.

The policy does not currently permit the transfer of additional housing units which may be permitted on the lot for assisted housing, i.e. the assisted housing bonus from the donor lot cannot be transferred. The policy, however, does not preclude the use of the 25 percent bonus on the receiving site which could be exercised in accordance with other provisions of the Plan. This continues to be the appropriate means for the use of this bonus and I am not recommending any changes to the small sites policy in this regard.

Review in 5 Years

The current policy does not require a review. Because of the changes proposed and to assess the impact of those changes, I am proposing that the amended Section 3A.5(f) include an automatic 5 year review. This review would look at the effectiveness of the policy in achieving its objective and identify any areas where further modifications should be made.

7.3 Revised Section 3A.5(f)

On the basis of the foregoing analysis, I am recommending that the existing Section 3A.5(f) be deleted and replaced with a new section. The proposed changes to the existing policy can be summarized as follows:

1. clearly state the mixed-use intent of the policy and that it is, in essence, a density exchange;

2. require the submission of detailed plans for all lots involved;

3. Council must give consideration to requiring the the housing be built prior to the commercial;

4. the maximum lot size is rounded off to .4 hectares;

5. more than two lots may be involved;

6. the lots do not have to all be located in the same Official Plan designation, but each must be located either in a Medium Density Mixed Commercial-Residential Area, a High Density Mixed Commercial-Residential Area, or the Financial District;

7. residential density may be calculated on the basis of either uph system or fsi system; and

8. review in 5 years.

Other conditions of the existing policy, if not revised as noted above, are proposed to remain. The proposed new Section 3A.5(f) is generally as set out below:

3A.5(f): Density Exchanges for Small Sites

In order to assist in achieving the mixed-use objectives of the Plan and in particular, to realize the housing potential of the mixed commercial-residential areas, and in order to provide for the efficient development of those small lots within High or Medium Density Mixed Commercial-Residential Areas or the Financial District where mixed-use development may not readily be achieved, Council may, by by-law, allow an exchange of development rights between two or more small lots in accordance with this Section. Notwithstanding any other provision of this Plan and upon application by the owners of the lots, Council may pass by-laws to permit commercial floor area, or conventional housing units, or residential gross floor area, as the case may be, permitted by this Plan on one lot, to be transferred in whole or in part and erected or used on another lot or lots provided that:

i) the aggregate of the commercial floor area and residential floor area or number of conventional housing units permitted on all the lots to which such by-law applies does not exceed the sum of the commercial floor area, residential floor area or number of conventional housing units permitted on each such lot by Section 3A.2(b), 3A.3(b) or 3A.4(b) as the case may be;

ii) a by-law has not been previously passed under this Section and approved by the Ontario Municipal Board which applies to any of the lots;

iii) the lots involved are small lots, none of which exceeds 0.4 hectares in area (for the purposes of this Plan, the area of any parcel of land which abuts any of the lots at any point shall be included in calculating the area of those lots, if the owner or owners of the lot owns a legal or equitable interest in the parcel, is the

beneficiary of a trust in respect of the parcel, or owns or is beneficiary of a trust of shares in the capital stock of a corporation which owns a legal or equitable interest in the parcel for the benefit of which such an interest is held);

iv) to ensure the mixed-use objectives are achieved on an area basis, to minimize transportation impacts and to ensure minimum distortions in the land market, at least one point on the boundary of each lot is not further than 150 metres from one point on the boundary of any other lot to which density is being transferred;

v) the by-law prohibits the erection of a building on each lot in which the commercial density and the residential density or residential fsi density exceed the limits determined by the mixing formula as set out in Section 3A.2(b), Section 3A.3(b) or Section 3A.4(b), in the case of a lot located in a Medium Density Mixed Commercial-Residential Area, High Density Mixed Commercial-Residential Area, or the Financial District, respectively;

vi) at the time of the passage of such by-law, no lot from which commercial floor area will be transferred contains a building in which the commercial density exceeds 0.7 times the maximum commercial density permitted on that lot by this Plan;

vii) prior to passing the by-law referred to in this Section, Council has given consideration to requiring that the commercial density in excess of that permitted prior to the by-law on the lot or lots to which commercial density is being transferred, not be permitted to be built until such time as the residential floor area or conventional housing units permitted by the by-law are erected; and

viii) any application made under this Section is accompanied by detailed plans and drawings for the develpment of each lot to which the by-law will apply.

Council shall review the effectiveness of this Section in achieving its objective every five years and determine on the basis of that review, whether amendments to this Section are appropriate.

7.4 Impact of the Proposed Changes

Under the revised transfer policy, two of the previous transfers that had required Official Plan amendments would not require an Official Plan amendment. These are the King Deck proposal (an Official Plan amendment would still be required due to special provisions of Section 11 which apply to one of the lots, but not because of the density transfer) and the Bay/Gerrard proposal which could, under the revised policy, take advantage of the fsi density provisions.

The three remaining transfers, 252 Adelaide/44-50 York; Scotia Plaza/Waterpark Place; and 31 Bloor Street East would still require Official Plan amendments under the revised Section 3A.5(f).

The proposed changes to the small sites policy achieve two objectives, first the policy intent of the section has been clarified, and second, conditions which were unnecessarily restrictive have been relaxed (number of sites; sites located in the same designation). Notwithstanding these changes, it is expected that the policy will continue to have fairly limited application especially within the Financial District, where to some extent the pressure for transfers has been greatest. The revised policy does provide for additional opportunities along the interface of different land use areas, for example, the Financial District and adjacent High Density Mixed Commercial-Residential Areas.

8. Density Transfers to Achieve Other Objectives

The three transfers approved by Council that would still require Official Plan amendments under the revised policy are transfers in which it was felt that particular objectives, other than that embodied in the small sites policy could be achieved. These included historic preservation; a unique opportunity to revise a previous building scheme on the Waterfront; and securing affordable housing, transit improvements and a municipal parking garage. In addition, in the past under the existing Section 3A.5(f), objectives other than those intended under the small sites policy were also achieved, in particular historic preservation (Sun Life/St. Andrews) and the building of a community service facility (the Metro Ambulance site).

These previous transfers, and other proposals in early stages of discussion with staff, raise the question of whether a broader policy or policies should be considered as a means to achieve objectives other than the limited objectives of the small sites policy. At the same time, concern has been expressed about the potential impact on the Plan of the transfers which have proceeded as Official Plan amendments. This section looks at the potential for broadening the objectives for a density transfer program.

8.1 Density Transfers for Heritage Preservation

The most extensive experience with density transfers in North America relates to heritage preservation. In Toronto, as well, experience has shown density transfers to be a valuable tool to achieve preservation of historic structures. Three of the nine transfers approved by Council involved heritage preservation. One of these, the Wintergarden/Elgin Theatre block occasioned a general amendment to the Official Plan to permit similar transfers for performing arts buildings by way of site specific Official Plan amendments.

Section 1A.42(d), briefly discussed earlier in Section 3, is a targeted historic preservation transfer policy. Due to the limited experience at the time with such transfers, and hard on the heels of the 252 Adelaide Street West transfer which I did not support, this limited and cautious policy initiative was appropriate.

Having reviewed the experience of other municipalities in this area, and having regard for our greater experience with transfers generally, I am of the view that a heritage preservation transfer policy of more general, but still limited application, is called for.

8.1.1 Existing Plan Incentives for Preservation

Under Section 1A.42(b), the Plan currently provides for a density exemption up to a specific maximum when an historic building is suitably preserved within a new development. To date, Council has approved exemptions for 12 projects under this provision and Heritage Easement agreements were registered for these 12 projects. Though this policy has been helpful in several instances, experience has shown that it is not applicable to all cases where there is a desire to retain a building. For example, when there is little or no space for a new development on the historic site and no opportunities to expand the lot, or where development is undesirable over or adjacent to a building, and/or where the historic building and therefore the bonus is very small, this policy is not useful.

A number of Part II Plans also allow for special provisions where an historic building is involved. For example, in a residential area, the South East Spadina Part II permits an historic building to be used for commercial purposes. A similar provision in the King Parliament Plan allows commercial use of an historic property under certain circumstances. In addition, Heritage Easements have been secured by other means through the rezoning process, on a site by site basis.

While all useful, the existing incentives appear to be inadequate to save many buildings particularly in the Financial District or other areas where redevelopment pressure is intense; i.e. when the benefits (profits) to redeveloping the site in the current market far outweigh the retention of the historic building.

A density transfer policy which applied to such sites would be an important and useful addition to the City's preservation tools.

It is also interesting to note that at the time of the Central Area Plan, the concept of density transfers for historic preservation was actually identified as a potential method to preserve designated historical buildings. The Central Area Plan Review Proposals report concluded in 1975 that although desirable, further work was required before it could be recommended.

Considerable time has passed and experience gained since that preliminary analysis. In my view, a carefully circumscribed, limited and targeted policy of density transfers as discussed in more detail below, for heritage preservation should be adopted by City Council.

Staff of the Toronto Historical Board were consulted in the development of the proposed heritage preservation transfer policy and are generally in agreement with the structure of the recommended policy. It should be noted that a further review of

the overall preservation policies of the Plan is currently underway as part of the 10 year review of the Plan, in accordance with Section 1A.42(c) of the Plan. In this context, I will be assessing the effectiveness of existing preservation techniques, in consultation with the Historical Board, and exploring further options for securing the future of Toronto's heritage buildings.

8.1.2 A Proposal for a Heritage Density Transfer Policy

(a) Applicable Sites

An important consideration in formulating a policy is the effect it could have on the pace of commercial development in the Central Area. At the time the Plan was developed, it had been assumed that many historic sites would not be redeveloped and the commercial density attached to them would not be realized. If owners of such historic sites are allowed to transfer their excess commercial density to other sites where it will be used, density not accounted for in the Plan could materialize. It is important to limit the number of sites which may be eligible for a transfer policy as much as possible to ensure that the development potential inherent in the policy does not significantly impact on the rate of office development in the Central Core. The policy should therefore target those sites for which other preservation solutions, such as the bonus, are clearly not useful.

Lot Size

Generally those sites for which the present bonus policy in Section 1A.42 is inadequate are sites that are small and almost entirely covered by an historic building. It appears that in general, sites in excess of .4 hectares (1 acre) have sufficient land to permit development on the lot, into which the historic building can be integrated. It would be the very exceptional case (as for example Maple Leaf Gardens) where a building situated on a lot in excess of .4 hectares would have a footprint large enough to make additional reasonable development on the lot infeasible. I am therefore proposing that only those designated historic buildings on lots less than .4 hectares in size be included in the policy.

Area Designation

In my view, it would also be appropriate initially to consider only those historic buildings in High and Medium Density Mixed Commercial-Residential Areas and in the Financial District within the Central Core until the impact and usefulness of the policy can be assessed. These are the areas where the greatest pressure for

redevelopment exists and hence where the threat to historic buildings is strongest. The potential impact of expanding the policy beyond the Central Core can better be assessed after the limited policy has been in place for a period of time and after a review has been conducted.

It would not be appropriate to have a general policy for density to be transferred within or into Low Density Mixed Commercial-Residential (LDMCR) Areas, Residence Areas or Areas of Special Identity where the sensitivity to shifts in density is great. Moreover, designations such as LDMCR, Low Density Residence Area, and Areas of Special Identity are generally intended to discourage redevelopment and encourage the retention of commercial strips, low-rise neighbourhoods and areas with special character, respectively. There would be only a very few exceptional instances where an historic building could not be reasonably retained within the density limits of these designations. A general policy should not be developed around these few exceptional cases. Other site specific preservation solutions should be considered in those instances.

In addition, industrial areas would not be appropriate areas for the purposes of a density transfer program principally because there would be no market for industrial density.

Impact of Proposed Limitations

If density transfers were limited to small sites within the Financial District and High and Medium Density Mixed Commercial-Residential Areas of the Central Core, I estimate the total amount of density that could be available for transfer (based on the current list of historic and designated buildings) to be in the order of 166,599 square metres (1,793,315 square feet). Of this, approximately 59,966 square metres (645,490 square feet) was not expected to be realized during the life of the Central Area Plan. In other words, under the proposed policy, the amount of unanticipated additional density is in the order of 60,000 square metres. Although this figure is substantial, it is unlikely to significantly affect the rate of office growth in the Central Core, particularly since this represents a maximum figure that may be built over time through the rezoning process, and is not immediately available at one time. Also, it is likely that at least some of these buildings which were considered for the purposes of this study would, in the

final analysis, not be appropriate or likely candidates for transfer.

(b) Transferring with an Historic Bonus

Another important question is whether the historic bonus permitted through Section 1A.42(b) of the Official Plan should be allowed to be used for the purposes of calculating the permissible gross floor area of the historic site, and hence the amount of 'residual' gross floor area available for transfer from any given site. Section 1A.42(b) allows the floor area of a designated building, which is to be retained in a new development, to be excluded from the density calculation, up to certain maxima which are proportions of the maximum permissible non-residential floor area for the area in which the lot is located.

In my view, it would be appropriate that Section 1A.42(b) continue to apply in the case of a density transfer for essentially two reasons. First, the thrust of the proposed transfer policy is to give the owner of the historic building the opportunity to realize the benefits of the maximum density in the Plan even though there is no land contiguous to the building upon which to build the density. If the historic building were located on a lot which permitted redevelopment that incorporated the building, the bonus could be realized. As a matter of equity, this should also be available on the lot where redevelopment is not feasible. Second, in the Financial District in particular, the availability of the bonus may make the difference between a decision to transfer (and therefore save the building) or demolish and build a new building. There is a premium involved in retaining and refurbishing an historic building, which may then rent for considerably less than new office space. The additional 2 times coverage available in the Financial District appears to be an essential element to making a transfer a viable option.

(c) Securing the Future of the Historic Building

A Heritage Easement would be a requirement of any density transfer under the proposed policy. In many instances, this may be sufficient to secure the future of an historic building. This is, however, not always the case. It is equally important that the physical condition of the building, its location, the proposed use as well as the evolving character of the surrounding area also be evaluated to assure that there is a long-term future for the building. The financial ability of the owner/proposed user of the building to adequately maintain and/or restore it under market conditions prevailing at the time is also a factor in assessing the long term viability of the building.

I am therefore proposing that, in addition to the requirement for a Heritage Easement Agreement, that the applicant for a heritage transfer also submit for Council's review a renovation plan and a proposal for the future use of the building and that these must be approved by Council. Where appropriate, Council may consider requiring that a trust fund or a performance bond be established from the sale of the density rights to secure the maintenance and/or restoration of the building.

(d) Transfer of Residential Density Back to the Historic Site

In most circumstances, a density transfer from one site to another also results in a reciprocal transfer of density back to the donor site. In the case of a historic preservation strategy, this must be viewed with caution. The point of the density transfer is to preserve the historic building, not achieve mixed-use objectives. Under these circumstances, one would normally not want to see the residential density built. On the other hand, it would not be appropriate to leave the surplus residential density on the other lot, since the resulting potential density on the receiving lot would be greater than the mixing formula constant.

Another alternative would simply be to 'extinguish' this residual residential density, leaving neither site in a position to later seek to realize the potential. While this alternative has merit, it does not deal with the issue of what would happen on the historic site in the event the building were razed or otherwise destroyed by an Act of God. In such an instance, the question of the future of the site would, of course, arise. The options appear to be to: (1) decide in advance that the use should be residential and therefore allocate the residential density on that basis to the historic lot, or (2) 'extinguish' the residual residential density, zone the historic lot to permit only the historic building, and leave it to a future Council to determine, on the basis of the then current circumstances, the most desirable use for the lot.

I am recommending that the residential density be allocated to the historic site to be used only in the event the building is destroyed by an Act of God because it most closely parallels the intent of the small sites transfer. In the future, if the historic building is destroyed, the site remaining would be a small site (less than .4 hectares). This would allow Council to essentially achieve one objective (mixed-use development) in lieu of another (historic preservation) which has been nullified. Future Councils could, of course, decide a different future for the site in any event, but by designating

the site for residential at least sets the starting point for discussions of that future.

(e) Distance, Number of Lots and Plan Designation

For reasons similar to those set out in the previous Section on the small sites transfer policy, I am recommending parallel provisions for the historic preservation transfer policy with respect to distance between lots, the number of lots involved and the Official Plan designations for the lots involved. These are, briefly, that a lot can be no further apart than 150 metres from another lot to which density is being transferred; more than two lots may be involved in a transfer; and the lots must be located in a Medium Density Mixed Commercial-Residential Area (MDMCRA) or High Density Mixed Commercial-Residential Area (HDMCRA) or the Financial District, but do not have to all be located in the same designation. In addition, I am recommending that the lot be located in one of the above noted areas within the Central Core.

The 150 metre distance limitation between the historic lot and any receiving lot is an appropriate means to safeguard against negative transportation impacts of a transfer and a reasonable way of minimizing potential distortions in land values.

As noted previously, I am proposing the limitation that the lots be located in the Central Core until the impact of the proposed policy can be assessed. The MDMCR and HDMCR Areas and the Fiancial District in the Central Core experience the greatest pressure for redevelopment in the Central Area. The proposed policy appropriately focusses on the areas of greatest need and where the technique of a density transfer is desirable and viable.

As in the small sites policy, I do not feel that it is necessary to limit the transfers to two sites. Other criteria of the proposed policy will deal with issues of built form and maximum density on receiving sites. It is desirable that the policy be flexible enough to permit transfers from say two historic sites to one larger receiving site, or from one larger historic site to two smaller receiving sites. This flexibility can only be achieved if more than one lot is involved.

(f) Density Limits

Section 3A.5(f) limits the maximum density on any lot to the mixing formula constant for reasons of built form and impact and for equity reasons and I am not recommending any changes in this regard. The historic performing arts transfer policy

(1A.42(d)), however, allows for increases above the mixing formula constant, under certain circumstances. Because this policy can only be implemented by a site specific Official Plan amendment, this increase beyond the mixing formula constant can also only be achieved by means of an Official Plan amendment. It would not, in my view, be appropriate that this possibility exist within a general policy. For this reason, I am also recommending a requirement that the limit for density transfers involving historic sites not exceed the mixing formula applicable to the lot.

(g) The Historic Performing Arts Transfer Policy

In establishing a new general policy for density transfer to achieve historic preservation, consideration should be given to the whether the existing policy 1A.42(d) should be amended, recinded or left in tact.

In some respects, the two policies, the existing and the proposed, are compatible and could exist in the Plan without conflict.

The proposed policy is more liberal with respect to the number of sites which can be involved in a transfer and would be applicable in Medium and High Density Mixed Commercial-Residential Areas and the Financial District in the Central Core whereas Section 1A.42(d) applies to only High Density Mixed Commercial-Residential Areas south of Grosvenor and the Financial District. On the other hand, because of its very limited application (in terms of eligible buildings), the historic performing arts policy does not establish a limit on the distance which the density can travel (other than within the Central Core) and allows for density in excess of the mixing formula constant.

At this time I am not proposing to repeal the historic performing arts transfer policy, however I believe that further consideration should be given to this question in the context of the theatre block redevelopment plan currently underway.

(h) Five Year Review

I have elsewhere proposed a five year review for the revised small sites transfer policy. I am also making a similar recommendation with respect to the proposed heritage preservation transfer policy. The review should evaluate the effectiveness of the policy in preserving historic buildings and in the impact on the total amount of commercial floor area approved and constructed during the five year period.

8.1.3 Proposed New Section 1A.42(e)

Based on the previous discussion, I am recommending a new Section 1A.42(e) of the official Plan for heritage preservation. The provisions of this general policy can be summarized as follows:

1. the lots must be located in the Central Core and either within a Medium Density Mixed Commercial-Residential Area, High Density Mixed Commercial-Residential Area or the Financial District and can be no further apart than 150 metres;

2. the historic lot is less than .4 hectares and Council has determined that redevelopment on the lot is either infeasible or undesirable;

3. the density on the receiving site or sites is limited by the mixing formula constant for the area in which the site is located;

4. the historic building is secured by a Heritage Eastment agreement, and a renovation plan has been approved by Council;

5. any residential density remaining on the historic lot can only be used in the event the designated building is destroyed by an Act of God;

6. the historic bonus can be transferred; and

7. the policy shall be reviewed every 5 years.

I am therefore proposing the following new Sections 1A.42(e) and (f):

1A.42(e) Notwithstanding any other provisions of this Plan, with the exception of Section 1A.42(a) and 1A.42(b), upon application therefore by:

(a) the owner of a lot (hereinafter called the designated lot) located in the Central Core and located in either a Medium or High Density Mixed Commercial-Residential Area, or in the Financial District, which lot comprises a designated property within the meaning of the Ontario Heritage Act, and

(b) the owner of another lot or owners of other lots located in the Central Core and located either within a Medium or High Density Mixed Commercial-Residential Area or within the

Financial District (hereinafter called the "receiving" lot or lots),

Council may pass by-laws applicable to the designated lot and the receiving lot or lots to permit commercial gross floor area which is permitted to be erected and used on the designated lot to be transferred and erected and used on the receiving lot or lots provided:

i. the by-law reduces the maximum commercial gross floor area permitted to be built on the designated lot by an amount equal to the difference between the total commercial floor area permitted on the lot prior to the passing of one by-law, (excluding any floor area which may be excluded pursuant to Section 1A.42(b)), and the existing gross floor area contained in the buildings to be retained;

ii. the By-law increases the maximum amount of commercial gross floor area which may be permitted to be erected and used on the receiving lot or lots by an amount not exceeding in total the amount permitted to be transferred from the designated lot by subsection (i) above;

iii. a by-law has not been previously passed under this Section or Section 3A.5(f) and approved by the Ontario Municipal Board which applies to any of the lots;

iv. the designated lot does not exceed 0.4 hectares in area (for the purposes of this Plan, the area of any parcel of land which abuts any of the lots at any point shall be included in calculating the area of those lots, if the owner or owners of the lot owns a legal or equitable interest in the parcel, is the beneficiary of a trust in respect of the parcel, or owns or is beneficiary of a trust of shares in the capital stock of a corporation which owns a legal or equitable interest in the parcel for the benefit of which such an interest is held);

v. at least one point on the boundary of the designated lot is not further than 150 metres from one point on the boundary of any receiving lot to which density is being transferred;

vi. the by-law prohibits the erection of a building on any receiving lot or lots of a building in which the commercial density and the residential density or residential fsi density exceed the limits determined by the mixing formula as set out in Section 3A.2(b), Section 3A.3(b) or Section 3A.4(b), in the case of a lot located in a Medium Density Mixed Commercial-Residential Area, High Density Mixed Commercial-Residential Area or the Financial District, respectively;

vii. the by-law prohibits the erection or use of any residential density remaining on the designated lot except in the event that the historic building is destroyed by an Act of God;

viii. the retention, maintenance and use of the designated building are secured by the City in an appropriate legal agreement;

ix. Council has determined that in its opinion, a development on the designated lot incorporating the historic building is not realistic or desirable; and

x. the application in respect of the designated lot is accompanied by a renovation plan and/or a plan for the future use of the building and such plan or plans is approved by Council.

1A.42(f) Council shall review the effectiveness of the policy set out in Section 1A.42(e) in securing the retention of buildings and structures which have been designated as having historic or architectural value or interest, at least once every five years and include in such review an assessment of the impact of the policy on the total amount of commercial floor area approved and constructed during the five year period.

8.2 Density Transfers for Objectives other than Heritage Preservation

In Section 2, I outlined the general disadvantages inherent in density transfers as a whole. These disadvantages can be moderated in a general policy where the policy can be carefully circumscribed and targetted as in the revised small sites policy and the proposed heritage transfer policy. The disadvantages also clearly suggest however that caution must be exercised in dealing

with policies of more general application where objectives such as affordable housing, parks or other 'public benefits' are involved.

One of the major difficulties of formulating a more general policy is defining the appropriate limits of the policy. This is critical for two reasons. First, it is essential, as I have discussed earlier, that the potential impact of a more general density transfer policy on the basic assumptions of the Plan be evaluated in advance. Second, it is important that certainty attach to the applicability of any general policy so that land owners may be sure of equitable treatment under the policy. Because of difficulties of defining the limits of a general policy, as discussed in more detail below, I am of the view that density transfers outside the Plan (and outside the policy proposed in this report for heritage preservation) should be considered only in very exceptional cases and accordingly proceed by way of a site specific Official Plan amendment.

8.2.1 Impact of a General Policy for Other Objectives

Unlike a heritage preservation policy, where potential transfer sites can be identified in advance, a more general policy to, for example, achieve affordable housing or parks, is not generally amenable to such analysis. The difficulty is compounded when other 'public benefits' are considered such as improved urban design, daycare centres, transit improvements or other community service facilities.

In addition to the difficulty of predicting the number of opportunities for transfer created by a policy with these broader objectives is the problem of assessing 'how much' of a particular benefit must be provided in a transfer. Unlike the proposed heritage transfer policy where the 'how much' is known, i.e. the preservation of the historic building, other objectives pose problems in this regard. How many affordable housing units, what size park or daycare centre, what kind of transit improvements warrant a density transfer. Other than a park where a reasonable minimum can be established, these matters cannot be quantified in a meaningful way. As a result, the difficulty of assessing the impact of a broader policy is further compounded. There is also the additional problem of how these 'benefits' can be secured.

In view of the disadvantages, noted in Section 2, of density transfers in general, and because of the difficulties for predicting the extent to which a broad policy might generate such problems, I consider that a general extension of the transfer policy (other than for heritage preservation) to be undesirable at this time.

8.2.2 Difficulties of Ensuring Equity and Certainty

Even if it were possible to determine the potential impact of a broad policy for density transfers, and that impact was considered acceptable or desirable, the further problem arises as to the formulation of appropriate criteria.

Although still discretionary, the purpose of a general policy is to set out the circumstances under which Council will generally consider a proposal to be acceptable. To be meaningful, a policy must at minimum set out the criteria against which every application will be evaluated. Those criteria, although not necessarily exhaustive of the universe of applicable criteria, should represent a reasonably comprehensive list of considerations. This certainty is essential in order that equitable treatment can be assumed by landowners and that a minimum of risk is attached to pursuing a Council policy. The potential for equivocation must be minimal.

In this context, the important question for the landowner is can the criteria clearly set out those instances where an application is likely to succeed. For Council the important consideration is whether the criteria can ensure that the particular benefit is needed, usable, desirable or appropriate in all or most instances.

I do not believe that a general transfer policy can provide certainty to both landowners and Council at the same time. This is essentially because, in my view, it is not feasible to develop criteria that can satisfactorily identify when the proposed benefit is appropriate. This is an assessment that must be made on a site by site basis on the merits of the proposal. Accordingly, only general statements about the desirability and acceptability of a proposal could be reasonably set out, in order for Council to have the latitude to determine that, in any particular instance, either the park, daycare centre, or housing proposal (or a combination) is needed, or desirable. To give Council this latitude (which would be, in my opinion, absolutely essential) would be to give the landowner no certainty. In these circumstances, the landowner would be in no better position with regard to certainty that he would be without a policy and where he would be seeking an Official Plan amendment.

8.2.3. Alternative Means to Achieve Other Objectives

In evaluating the desirability of a broader transfer program to achieve other objectives, an important consideration is the suitability and effectiveness of other means or techniques to achieve these same objectives.

The Plan already has a basis for incentives for a number of objectives, including a 25% bonus for assisted housing, a parks

conveyance policy (Section 5.31(b)) and a community service and facilities bonus.

The assisted housing bonus has not been very successful in promoting or achieving assisted housing. In recent years greater success has been had in the context of rezonings and/or Official Plan amendments for additional conventional housing with the provision of assisted housing as a condition of approval. This latter method has not been systematized, or evaluated thoroughly, but in fact this approach forms the basis of a real bonus policy, unlike the existing provisions which are essentially density exemptions. In a true bonus policy, the developer would be able to build more of what he wants to build, in exchange for the provision of certain matters or facilities. The existing assisted housing bonus does not contain such an incentive; the existing floor area bonus is only to provide less profitable (from the developer's point of view) housing.

The same is true for the community services and facilities bonus. It is not a true bonus because no benefit accrues to the developer in exchange for providing the community service and facility or for providing space for such facilities.

The efficacy of the existing 'bonuses' may be questionable, however, in my opinion, a review of these bonuses should be undertaken before it could reasonably be concluded that a transfer program to achieve these objectives should be instituted to either augment or substitute for a bonus policy. As part of the 10 year review of the Central Area Plan, I will be looking further at the matter of the existing assisted housing bonus and at the community services and facilities bonus.

Finally, the original intent of the density transfer concept was, in essence, to allow for compensation where public action (or the desired public objective) would result in losses to certain land owners. In the case of the small sites exchange policy and the proposed heritage transfer policy, the technique is well suited to the objectives. In the case of the small sites exchange, the policy provides an opportunity for land owners to maximize the potential of their lands under the mixed-use designation where such owners might otherwise face a penalty or premium for mixed-use development. In the case of heritage preservation, the owner of such a property could suffer losses when preserving a building if redevelopment including the property was not feasible and retention without redevelopment was not economically viable. With other objectives, however, such as assisted housing, community facilities, and transit improvements, the use of a density transfer would be more in the nature of an incentive. In my view, the density transfer policy instrument is not one which is well suited to these other objectives and would represent a significant

departure from the original intent of the concept of transfers of development rights.

8.2.4 Site Specific Official Plan Amendments for Proposals Involving Other Policy Objectives

As I have indicated in my review, there should not be a general policy for density transfers to achieve other policy objectives. Such proposals, should they be made, should be considered as exceptional cases. I certainly expect that there may be proposals that come before Council, as they have in the past, that do not conform to the density transfer policies of the Plan, and which seek to achieve objectives other than those for which the existing policies are intended. I also expect that some of these may appear desirable, particularly where they clearly demonstrate the achievement of broader policy objectives.

However, there is sufficient evidence from other North American municipalities that such site specific amendments should be considered only in truly exceptional circumstances. Caution is necessary to prevent uncertainty in the land market. If in considering such site specific amendments, the expectation for further amendments was generated, there would be increased potential for uncertainty and speculation in the land market.

Officials of other North American municipalities have attributed much of the success of other programs, and satisfaction with them on the part of the development industry, to the limited application of the concept and to the fact that under no circumstances will site specific variances from the policies be permitted. This attitude of not entertaining any amendments is apparently quite firmly held by both planners and politicians in the cities reviewed by the consultants.

Obviously, the legislative basis of planning in Ontario under the Planning Act makes a prior decision to never consider Official Plan amendments for density transfers impossible. Under the Act, any person has the right to apply for an Official Plan amendment and Council is obliged to consider the amendment on its merits. Failure to consider, or a decision not to approve, an amendment can, of course, then be appealed to the Ontario Municipal Board. In this respect, there is a fundamental difference between the legal basis for planning in Ontario and in the United States.

This fundamental difference means that the position advocated by most planners and officials in U.S. cities with respect to amendments is not tenable. It is not reasonable to determine a priori that an application should be refused. On the other hand, I certainly think it is feasible and appropriate to ensure that consideration of any site specific amendment for density transfers include an assessment of the potential impact of the proposed

amendment on the matters outlined in this report and, in particular, on the question of the impact of the amendment on: (1) the land market, (2) expectations for further amendments, and (3) the ability of the existing policy to continue to contribute to a climate of certainty in the marketplace.

Conclusion:

This report and the companion report, "A comparative analysis of density transfer policies in several North American Cities", prepared by Berridge Lewinberg Associates together provide: (1) an overview of the potential role of density transfers in municipal land use regulation; (2) a review of the City's experience with density transfers; and (3) a comparative study of the experience relative success of programs of other municipalities.

On the basis of this background information and analysis, it is concluded that density transfers are a viable and valuable policy instrument where applied in limited circumstances to achieve specific and well defined objectives and should continue to be part of the City's planning tools.

In the context of the broader understanding of the potential advantages and inherent disadvantages of density transfers generally, I have evaluated the existing small sites policy and have concluded that a number of amendments to the policy are warranted. First, it is proposed that the intent of the policy be clarified. This would have the effect, to a certain extent, of limiting the potential application of the policy to only those situations for which it was intended. On the other hand, I am recommending greater flexibility with respect to the criteria attached to the policy by relaxing certain of the conditions regarding the number of sites and the designation of the sites which can be involved in a density exchange. The revised small sites policy is set out in Section 7.3.

Consideration has also been given to the question of whether the density transfer technique would be an appropriate policy instrument for achieving other objectives. It is concluded that a limited heritage preservation transfer policy would be a valuable addition to existing preservation policies. The proposed policy, set out in Section 8.1.3, focusses on those areas where redevelopment pressure appears to be greatest and would be restricted to those sites where other preservation tools are not likely to be effective.

The question of whether to broaden the policy objectives beyond heritage preservation to include matters such as affordable housing, public parks, or other community facilities has also been assessed. In my view, it is inadvisable to further expand the policy objectives of the City's density transfer program because of (1) the difficulties in assessing the impact of a broader policy, (2) the problems of ensuring equity and certainty and at the same time ensuring that any particular proposal meets the objective, and (3) there are other more appropriate tools to achieve these objectives.

Finally, it is the conclusion of this review that extreme caution must be exercised in considering any site specific Official Plan amendments involving density transfers which may come before City Council. The evidence from other planning officials in other North American cities, and confirmed by our own experience and analysis as outlined in this review, suggest that consideration of such amendments can have the effect of ultimately calling the entire policy into question.

APPENDIX

EXISTING POLICIES REGARDING TRANSFERS OF DENSITY

"1A.34 (a) Notwithstanding Section 1A.32 and 1A.33, Council may pass by-laws in Medium and High Density Mixed Commercial-Residential Area to permit up to the maximum gross floor area permitted by those Sections to be erected and used on a lot for general institutional purposes to be erected and used in whole or in part on one or more other lots, in addition to the gross floor area permitted by those Sections to be erected on such other lot or lots, provided that:

(i) the lots to which any such by-law applies are all owned by the same general institution at the date of passing such by-law;

(ii) the aggregate of the institutional gross floor areas permitted on all the lots to which any such by-law applies does not exceed the sume of the institutional gross floor areas permitted on each such lot by Section 1A.32 or 1A.33, as the case may be; and

(iii) regard is had for the impact of the additional institutional gross floor area permitted on any lot or lots to which any such by-law applies with respect to built-form, noise, traffic generation and the provision of parking."

"1A.42 (d) (i) Notwithstanding any other provisions of this Plan, with the exception of Section 1A.42(a), on applications therefor by:

(a) the owner of a lot (hereinafter call ed the "donor lot") located in the Central Core and located either within a High Density Mixed Commercial-Residential Area south of Grosvenor Street, or within the Financial District, which lot includes a designated property within the meaning of the Ontario Heritage Act, on which property is erected a building having historic or architectural value or interest which the owner proposes to restore for use or continued use as a

centre primarily for the purposes of accommodating performing arts (which building is hereinafter called the "historic centre"), and

(b) the owner of another lot located in the Central Core and located either within a High Density Mixed Commercial-Residential Area south of Grosvenor Street or within the Financial District (hereinafter called the "receiving lot"),

Council may adopt Amendments to this Plan applicable to the donor lot and to the receiving lot, respectively, the effect of which is to:

(aa) reduce the maximum commercial gross floor area which is permitted to be erected and used on the donor lot by by-laws passed in conformity with this Plan, by an amount up to an amount (hereinafter called the "density permitted to be transferred") equal to the amount of commercial gross floor area (hereinafter called the "existing gross floor area") which, immediately prior to the date of adoption of Amendments pursuant to this Section, was permitted to be erected or used on the portion of the donor lot which portions has boundaries which coincide with the boundaries of the designated property containing the historic centre, but excluding from the calculation of the existing gross floor area, the amount of the commercial gross floor area contained within the historic centre immediately prior to the date of adoption of such Amendments, and

(bb) increase the maximum amount of commercial gross floor area which may be permitted to be erected and used on the receiving lot by by-laws passed in conformity with this plan, by an amount up to an amount equal to the amount of the density permitted to be transferred from the donor lot,

provided that:

(1) Council is satisfied that the owner of the donor lot will expend the proceeds of the sale of the density permitted to be transferred, as soon as is reasonably practicable to do so, to defray the whole or part of the cost of acquisition and/or restoration of the historic centre, or of the whole or part of the cost of acquiring additional land on which to erect and/or the cost of erecting additional facilities to be used in connection with the use of the historic centre, and further that the historic centre will be use dprimarily as a centre for the performing arts;

(2) the maximum amount of density permitted to be transferred from the donor lot to the receiving lot shall not in any case exceed the amount of commercial gross floor area which when combined with the amount of commercial gross floor area permitted to be erected and use on the receiving lot immediately prior to the date of the adoption by Council of Amendments pursuant to this Section, would exceed an amount equal to the constant in the mixing formula for the Area or District in which the receiving lot is located, except where:

- Council determines that the proposed transfer of density will be consistent with Council's policies set out in Section 1A.4 and 1A7 of this Plan,

- By-laws are passed to prmit the erection and use of only non-residential gross floor area on the receiving lot, and

- regard is had for the resulting bulk and form of development on the receiving lot;

in which cases the maximum amount of density permitted to be transferred from the donor lot to the receiving lot when combined with the commercial gross floor area permitted to be erected and used on the receiving lot immediately prior to the date of adoption by Council of Amendments pursuant to this Section, may exceed the constant in the mixing formula for the District or ARea in which the receiving lot is located.

(3) Council has regard for the compatibility of the development which may be erected and used on the receiving lot with development which is or may be lcoated adjacent thereto.

1A.42 (d) (ii) A by-law shall not be passed under Section 1A.42(d) in a case in which a by-law applicable to either the donor lot or the receiving lot previously has been passed under Section 1A.42(b), nor shall a by-law be passed under Section 1A.42(b) in a case in which a by-law has previously been passed under Section 1A.42(d) applicable to either the donor lot or the receiving lot, as the case may be.

1A.42 (d)(iii) For the purposes of Section 1A.42(d), the term "performing arts" means live theatrical, dance and/or musical productions."

"3A.5 (f) Notwithstanding any other provisions of this Plan, in any High or Medium Density Mixed Commercial-Residential Area, or in the Financial District, Council may pass by-laws in respect to any two lots located within the same District or Area to permit:

(i) the erection and use, on one lot (hereinafter called the "receiving lot") of a building containing conventional housing units not exceeding in number the aggregate of the number permitted by this Plan on that lot and on the other lot (hereinafter called the "donor lot"); and

(ii) the erection and use on the donor lot of a building containing a commercial gross floor

area not exceeding the aggregate of the commercial gross floor area permitted by this Plan on that lot and on the receiving lot;

provided that:

(iii) the by-law applies to not more than two lots;

(iv) a by-law has not been previously passed under this Section and approved by the Ontario Municipal Board which applies to either or both of the donor and the receiving lots;

(v) neither the donor nor the receiving lot exceeds 0.405 hectares in area (for the purposes of this Plan, the area of any parcel of land which abuts either or both of the donor or receiving lots at any point shall be included in calculating the area of those lots, if the owner or owners of the donor or receiving lot owns a legal or equitable interest in the parcel, is the beneficiary of a trust in respect of the parcel, or owns or is the beneficiary of a trust of shares in the capital stock of a corporation which owns a legal or equitable interest in the parcel or for the benefit of which such an interest is held);

(vi) at least one point on the boundary of the donor lot is not further than 150 metres from one point on the boundary of the receiving lot;

(vii) where Council has, pursuant to Section 3A.3(f), passed a by-law applicable to lots in High Density Mixed Commercial-Residential Area to require that buildings have a commercial density in excess of 3.0 also contain housing, the by-law referred to in this section prohibits the use for commercial purposes of buildings permitted to be erected on the donor and receiving lots, until the number of housing units required to be erected in accordance with the provisions of Section 3A.3(f) of this Plan have been erected on the receiving lot or the donor and receiving lots, as the case may be;

(viii) the by-law prohibits the erection of buildings on the donor and the receiving lots in which the commercial density and the residential density exceed the limits determined by the mixing formula as set out in Section 3A.2(b),

Section 3A.3(b) or Section 3A.4(b), in the case of lots located in Medium Density Mixed Commercial-Residential Area, High Density Mixed Commercial-Residential Areas, or the Financial District, respectively;

(ix) the by-law reduces the number of conventional housing units permitted to be erected on the donor lot by an amount equal to the additional number of conventional housing units permitted to be erected on the receiving lot;

(x) the by-law reduces the commercial gross floor area permitted to be erected on the receiving lot by an amount equal to the additional commercial gross floor area permitted to be erected on the donor lot; and

(xi) at the time of the passage of such by-law, the receiving lot does not contain a building in which the commercial density exceeds 0.7 times the maximum commercial density permitted on that lot by this Plan."